

AMENDED IN SENATE JULY 3, 2007

AMENDED IN SENATE JUNE 20, 2007

AMENDED IN ASSEMBLY MAY 2, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 938

Introduced by Assembly Member Charles Calderon

February 22, 2007

An act to add Chapter 27 (commencing with Section 16100) to Division 7 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 938, as amended, Charles Calderon. Regional water management.

Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements for the discharge of stormwater in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act, and the Porter-Cologne Water Quality Control Act. Various programs finance regional water management planning.

This bill would authorize a county, or a city under certain circumstances, to convene one or more watershed water quality committees to develop and facilitate cooperation in achieving local water quality solutions. If convened, the committee would be required to include *at least* one member representing the appropriate regional board, *as well as at least one member from entities representing resource agencies, water agencies, sanitation districts, the environmental community, landowners, business, and industry, and, where appropriate, agricultural interests*. The committee would be ~~authorized~~ *required* to

prepare a specified work plan for the development of a watershed water quality management plan, for approval by the regional board under specified circumstances. The committee would be required to use reasonable efforts to prepare, and submit to the regional board for its approval, a watershed water quality management plan within 3 years of the date on which the regional board approves the work plan. The watershed water quality management plan would be required to address major sources of *pollutants in stormwater; and urban runoff, and nonpoint source other surface runoff* pollution within the region to which the plan applies.

The bill would require the regional boards to review and approve a watershed water quality management plan prepared by a watershed water quality committee in accordance with specified procedures. The bill would require the regional boards to consider the watershed water quality management plans for adoption as water quality control plans or as the basis for an amendment to a water quality control plan. The state board would be authorized to review the actions or the failure to act by a regional board with regard to proposed watershed water quality management plans. The state board would be required to require or uphold the approval of the plan, and its adoption as a component of a regional water quality control plan, or as the basis for a conforming amendment to a regional water quality control plan, if the plan is not otherwise contrary to law and other requirements are met.

The bill would authorize a city, county, or special district that provides water, sanitation, or refuse collection services to design, acquire, construct, operate, maintain, and furnish facilities for the diversion, interception, or collection of surface runoff, including urban runoff, stormwater, and other forms of runoff, the treatment of pollutants in these waters subject to waste discharge requirements, and the return of these waters to enhance beneficial uses of waters of the state, or the beneficial use or reuse of these waters. The bill would specify that ~~a a public entity to which it is applicable~~ *the city or county, or special district as described*, may impose fees and charges to construct, operate, and maintain these facilities, and perform related activities to implement this authority.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Uncontrolled pollutants in urban runoff, stormwater, other
4 forms of runoff, and nonpoint source pollution can present
5 significant water quality problems and challenges to the State of
6 California. In many instances, pollutants in runoff adversely affect
7 the state's rivers, streams, lakes, bays, estuaries, and beaches. The
8 effective management and control of pollutants in runoff are
9 challenging tasks because of the diffuse nature of the pollution
10 sources, the massive volumes of runoff flow involved, and the
11 unpredictable and intermittent nature of runoff volumes and their
12 pollutant loads and concentrations.

13 (b) This act provides and encourages innovative solutions to
14 meet obligations imposed under the Porter-Cologne Water Quality
15 Control Act ("Porter-Cologne") ~~and the Federal Water Pollution~~
16 ~~Control Act implemented pursuant to Porter-Cologne, including~~
17 *Control Act and the federal Clean Water Act, including* the
18 provision of a framework for increased cooperation and
19 collaboration; among the regional boards, local governments, and
20 watershed stakeholders; to help remedy pollution that can result
21 from uncontrolled runoff and other nonpoint sources. This act calls
22 for the voluntary formation of water quality committees that will
23 bring to bear in a cooperative framework the expertise, knowledge,
24 and resources of local governments, special districts, and
25 stakeholders in developing watershed-based, water quality
26 solutions.

27 (c) Uncontrolled pollutants in urban runoff, stormwater, other
28 forms of runoff, and other nonpoint source pollution can adversely
29 affect surface waters and their designated beneficial uses, including
30 water supply, public health and recreation, and the support of
31 aquatic and other wildlife. For these reasons, federal and state
32 lawmakers have enacted various provisions of law to regulate these
33 waters, and, in California, the ~~water~~ *State Water Resources Control*
34 *Board and the California regional water quality control* boards
35 administer regulatory programs to implement these statutory
36 authorities.

37 (d) Currently, total maximum daily loads (TMDLs), municipal
38 stormwater permits, nonpoint source policies, implementation

1 plans, and other initiatives to regulate pollutants in surface water
2 runoff place significant technical and financial burdens on local
3 governments. Given other important demands on county and city
4 budgets and limited availability of local funding mechanisms, local
5 governments and other regulated stakeholders find it difficult to
6 develop and fund the water quality management control facilities
7 and programs called for by these regulatory programs.

8 (e) This act will enable counties, cities, and water, sanitation,
9 and refuse collection special districts to finance, construct, and
10 operate facilities to control, treat, and improve the quality of runoff
11 and other nonpoint source flows. By doing so, this act encourages
12 local agencies to develop and implement long-term, locally based,
13 watershed and subwatershed scale, feasible projects to remedy
14 pollution associated with runoff and other nonpoint source flows.
15 Significant benefits to water quality are expected to result from
16 clarifying the authority of local agencies to finance, operate, and
17 construct those water quality management and control facilities.

18 (f) Construction, maintenance, operation, and financing of
19 facilities and systems for the diversion, interception, or collection
20 of surface runoff, including urban runoff and stormwater, the
21 treatment of pollutants in these waters as required by waste
22 discharge or other regulatory water quality control requirements,
23 and the return of these waters to receiving water bodies to enhance
24 beneficial uses, or the beneficial use or reuse of these waters, are
25 essential parts of providing effective sewer, water, and refuse
26 collection services, are critical to providing for the protection of
27 beneficial uses, including water supply uses, for the waters of the
28 state, and are necessary responses to the requirements of existing
29 and future water quality regulatory programs, and to the
30 maintenance of public health.

31 SEC. 2. Chapter 27 (commencing with Section 16100) is added
32 to Division 7 of the Water Code, to read:

33
34 CHAPTER 27. THE REGIONAL WATERSHED RUNOFF
35 MANAGEMENT AND FUNDING ACT OF 2008
36

37 Article 1. Definitions
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39 16100. For purposes of this chapter, the following definitions
40 apply:

(a) “Stormwater” includes stormwater runoff, snow melt runoff, and surface runoff and drainage associated therewith, including rising-ground waters *groundwater*, spring flows, and similar flows.

(b) “Surface runoff pollution” includes pollutants contained in or mobilized by surface flows, including nonpoint source pollution and pollutants in stormwater runoff, urban runoff, and other surface water flows.

(c) “Urban runoff” means runoff from developed or urbanized areas, including stormwater and nonstormwater surface flows such as, without limitation, irrigation return flows, groundwater discharges from subdrains, foundation drains, footing drains, air-conditioning condensation, flows from water lines, discharges from potable water sources, and other individual residential, institutional, or commercial surface discharges.

(d) “Watershed water quality *management* plans” are plans that address, at a watershed or subwatershed scale, major sources of stormwater pollutants, urban runoff pollutants, and other surface runoff pollution within the designated region to which the plan applies, and include, but are not necessarily limited to, both of the following:

(1) The technical tasks ~~and activities~~, *activities*, and facilities identified as necessary or important to meet surface water runoff water quality regulatory requirements.

(2) An economic analysis and finance plan to provide reasonable assurance of the implementation of the identified tasks, activities, and facilities for a specific watershed area by those who are responsible for developing watershed water quality *management* plans.

Article 2. Watershed Water Quality Committees

16100.5. (a) Each county may convene one or more watershed water quality committees for the purpose of developing and facilitating cooperation in achieving local water quality solutions for control of surface runoff pollution consistent with the objectives ~~of the Porter Cologne Water Quality Control Act and the federal~~ *of this division and the Clean Water Act (33 U.S.C. Sec. 1251 et seq.)*. Each county may establish subcommittees or separate committees for each watershed, or portion thereof, within its jurisdiction. If a county declines to convene a committee or

1 subcommittee for a particular watershed, any city or cities, the
2 boundaries of which encompass a substantial portion of that
3 watershed, may convene a watershed *water* quality committee for
4 that watershed.

5 (b) For the purpose of convening a watershed *water* quality
6 committee each county or city shall consult with any special district
7 and regional water management group, as defined in Section 10537,
8 to determine whether the special district, regional water
9 management group, or any of the regional water management
10 group's members, desires to be part of the committee.

11 (c) Each watershed water quality committee shall be led by the
12 city or county convening it and, when convened, the committee
13 shall consist of at least one member representing the appropriate
14 regional board, as well as at least one member each from entities
15 representing resource agencies, water agencies, sanitation districts,
16 the environmental community, landowners, business ~~and industry~~
17 ~~representatives, and industry~~, and, where appropriate, agricultural
18 interests.

19 (d) Watershed water quality committee members shall not be
20 entitled to any additional or special compensation for their service
21 on the committee.

22 (e) Public officers associated with any area of government,
23 including planning or water, and whether elected or appointed,
24 may participate in and may serve as members of a watershed water
25 quality committee.

26 Article 3. Watershed Water Quality Management Plans

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29 16101. (a) Upon a determination by a county or city to convene
30 a watershed water quality committee, other state agencies shall
31 support and participate in the development of a watershed water
32 quality management plan, and each committee shall prepare a work
33 plan for the development of a watershed water quality management
34 plan. A watershed water quality management plan shall not include
35 within its scope any previously established plan or project being
36 implemented by an agency under other statutory authority to meet
37 or assist in meeting regulatory requirements associated with urban
38 runoff, stormwater, or nonpoint source pollution, except with the
39 express consent of that agency.

1 (b) The work plan shall provide a detailed description of the
2 tasks and activities the committee will undertake, and the work
3 products that it anticipates will be necessary to prepare a watershed
4 water quality management plan, including a preliminary
5 characterization of the nature of natural, background surface water
6 quality and surface runoff pollution, and potential surface runoff
7 water quality solutions that the work plan will evaluate for purposes
8 of meeting regulatory requirements associated with pollutants in
9 urban runoff and stormwater, and other nonpoint source pollution,
10 including, but not necessarily limited to, municipal stormwater
11 permits, total maximum daily load regulatory requirements,
12 nonpoint source pollutant control policies and implementation
13 plans, and a proposed schedule for its activities required to prepare
14 a watershed water quality management plan. The work plan shall
15 be prepared consistent with ~~the Porter-Cologne Water Quality~~
16 ~~Control Act, including provisions~~ *this division, including provisions*
17 governing the preparation of water quality control plans.

18 (c) If the watershed water quality committee determines that
19 the watershed water quality management plan will be an effective
20 mechanism for complying with one or more regulatory
21 requirements imposed by a regional ~~water quality control~~ board,
22 the work plan shall not become effective unless approved by the
23 regional board with jurisdiction over enforcement of the regulatory
24 requirements within the watershed or watersheds that are the
25 subject of the work plan. The regional board may approve the work
26 plan, or return the work plan to the committee with specific
27 comments for modification, or revision of the work plan for
28 additional consideration by the committee, and in the committee's
29 sole discretion, action; and resubmission to the regional board.

30 (d) The regional board shall act upon any work plan not later
31 than 60 days from the date on which the committee submits or
32 resubmits the work plan to the regional board.

33 (e) A regional board may not unreasonably delay, withhold, or
34 condition its approval of a work plan. Pursuant to Section 13320,
35 the state board may review the failure of a regional board ~~or~~
36 ~~executive officer~~ to approve a work plan that meets the
37 requirements of this section.

38 16102. (a) Each watershed water quality committee shall use
39 reasonable efforts to prepare and submit to the regional board a
40 watershed water quality management plan within three years of

1 the date on which a regional board approves the work plan. A
2 committee may update periodically its watershed *water quality*
3 *management* plan to take into account new water quality
4 information or regulatory programs or standards, and may submit
5 any revised or new plan for approval to the regional board.

6 (b) If the watershed *water quality* committee determines that a
7 watershed water quality management plan will be a mechanism
8 for complying with one or more regulatory requirements imposed
9 by a regional ~~water quality control~~ board, the watershed ~~runoff~~
10 *water quality* management plan shall not become effective unless
11 approved pursuant to the procedures of Section 16105 by the
12 regional board with jurisdiction over enforcement of the regulatory
13 requirements within the watershed or watersheds that are the
14 subject of the management plan.

15 16103. Each watershed water quality management plan shall
16 address major sources of pollutants in stormwater and urban runoff,
17 and other surface runoff pollution within the region to which the
18 plan applies, and shall include all of the following elements
19 relevant to these waters as contained in this section:

20 (a) A description of the actions that will effect protection and
21 enhancement of designated beneficial uses of the waters of the
22 state, consistent with regulatory requirements and the prevention
23 of nuisance, and the attainment of the highest water quality that is
24 reasonable, considering natural water quality, controllable water
25 quality factors, and all demands being made and to be made on
26 the subject waters.

27 (b) Recommendations for appropriate action by any entity,
28 public or private, to improve water quality, a time schedule for the
29 actions to be taken, and description of surveillance to be undertaken
30 to determine improvement in water quality.

31 (c) A coordinated economic analysis and financing plan that
32 provides reasonable assurances that the watershed water quality
33 management plan will be implemented, and that balances the water
34 quality improvements anticipated to result from implementation
35 of the management plan with the economic and societal costs of
36 these improvements, developing where feasible use-based
37 approaches that place the cost of managing and treating surface
38 runoff pollution on the generators of the pollutants, as an alternative
39 to imposing these costs as an incident of real property ownership.

1 Elements of this financing plan may include any or all of the
2 following:

3 (1) Fees and charges pursuant to Sections 16104 and 16106.

4 (2) Financial participation and appropriate funding from federal,
5 state, and local sources.

6 (3) Funding from private sources to support implementation of
7 plan elements that will produce water quality benefits related to
8 compliance with regulatory requirements that would otherwise be
9 imposed on individuals or categories of persons, parcels, projects,
10 or activities.

11 (d) To the extent applicable, each plan shall contain regional or
12 subregional best management practices, watershed-based natural
13 treatment systems, low-flow diversion systems, or other measures
14 constituting structural treatment best management practices that
15 will protect designated beneficial uses, and assist in attainment of
16 water quality standards, or facilitate compliance with regulatory
17 water quality control requirements governing surface runoff
18 pollution.

19 (e) A determination of the water quality conditions that could
20 be reasonably achieved by the watershed water quality management
21 plan through the coordinated management of all controllable factors
22 that affect water quality in the area, including the natural
23 background quality of the region's runoff, surface waters and
24 groundwater supply, and the need for water conservation and reuse.

25 (f) A description of the proposed structure, operations, powers,
26 and duties of an implementing entity for the watershed water
27 quality management plan, such as a joint powers authority or group
28 of stakeholders, and a memorandum of understanding among public
29 and private plan participants to outline respective responsibilities,
30 relationships, and funding sources, and to ensure effective
31 implementation of the plan.

32 16104. Fees may be imposed to support the preparation and
33 implementation of watershed water quality *management* plans
34 approved by a regional board provided that the plans will facilitate
35 compliance with one or more regulatory obligations. Fees imposed
36 pursuant to this section shall mitigate the actual or anticipated
37 adverse effects of the feepayer's activities that contribute to surface
38 runoff pollution and the water quality benefit provided by
39 implementation of the watershed water quality management plan,

1 and the amount of the fees shall bear a fair and reasonable
2 relationship to those effects.

3 16105. (a) A regional board shall act upon any watershed water
4 quality management plan submitted for approval by a watershed
5 *water* quality committee not later than 60 days from the date on
6 which the committee submits the plan to the regional board. The
7 regional board may approve the watershed water quality
8 management plan, or return the plan to the committee with specific
9 comments for modification or revision of the plan for consideration
10 by the committee, and, in the committee's sole discretion, action
11 and resubmission of the plan. In the event that the committee
12 resubmits any watershed water quality management plan, before
13 or after initial approval by the regional board, the regional board
14 shall act on the resubmission as set forth in this section not later
15 than 60 days from the date of resubmission of the plan. A regional
16 board may not unreasonably delay, withhold, or condition its
17 approval of a watershed water quality management plan.

18 (b) Regional boards shall consider watershed water quality
19 *management* plans for adoption as water quality control plans, or
20 as the basis for an amendment to a water quality control plan that
21 conforms to the watershed water quality management plan.

22 (c) Pursuant to Section 13320, the state board may review the
23 actions or ~~failures~~ *the failure* to act by a regional board under this
24 chapter. If the state board determines that a watershed *water quality*
25 *management* plan is supported by substantial evidence, complies
26 with this chapter, and is not otherwise contrary to law, it shall
27 require or uphold *the* approval of the plan, and its adoption as a
28 component of a regional water quality control plan, or as the basis
29 for a conforming amendment to a regional water quality control
30 plan.

31 (d) A regional water management group, as defined in Section
32 10537, may adopt a watershed water quality management plan
33 prepared pursuant to this chapter, in whole or in part, as a regional
34 plan, as defined in Section 10536, or as part of a regional water
35 plan.

36 Article 4. Stormwater Management

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39 16106. (a) A city, county, or special district that provides
40 water, sanitation, or ~~reuse~~ *refuse* collection services may design,

1 acquire, construct, retrofit, operate, maintain, and furnish facilities
2 for the diversion, interception, or collection of surface runoff,
3 including urban runoff, stormwater, and other forms of runoff, the
4 treatment of pollutants in these waters subject to waste discharge
5 requirements and other water quality regulatory requirements, and
6 the return of these waters to receiving water bodies to enhance
7 beneficial uses of waters of the state, or the beneficial use or reuse
8 of these waters.

9 *(b) Subdivision (a) does not authorize a special district to*
10 *provide services that are not authorized by that special district's*
11 *principal act. Subdivision (a) does not authorize a special district*
12 *to provide services that the district did not provide prior to January*
13 *1, 2008, without first complying with the applicable requirements*
14 *of the Cortese-Knox-Hertzberg Local Government Reorganization*
15 *Act (Division 3 (commencing with Section 56000) of Title 5 of the*
16 *Government Code).*

17 ~~(b)~~

18 (c) A public entity described in subdivision (a) may impose fees
19 and charges to construct, operate, and maintain these facilities,
20 and perform related activities. The fees and charges may be
21 imposed on the generators of the runoff, stormwater, and nonpoint
22 source pollution as user-based or regulatory fees consistent with
23 this chapter.